



# PUBLIC NOTICE

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## DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL OF CYPRESS COMMUNICATIONS OPERATING COMPANY, INC.

### STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 04-417

Comments Due: December 3, 2004

Reply Comments Due: December 10, 2004

On November 12, 2004, Cypress Communications Holding Co., Inc. ("Cypress Holding") and TechInvest Holding Company, Inc. ("THC") (together, the "Applicants"), filed an application pursuant to sections 63.03 and 63.04 of the Commission's rules<sup>1</sup> requesting approval to transfer of control of Cypress Communications Operating Company, Inc. ("Cypress Operating"), an indirect subsidiary of Cypress Holding that provides in-building networks and resells telecommunications services, to a new group of shareholders.<sup>2</sup>

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(1)(ii) of the Commission's rules<sup>3</sup> because neither THC nor any of its affiliates is a telecommunications provider.

Cypress Operating is a Delaware corporation with its principal place of business in Atlanta, Georgia. Cypress holds blanket domestic Section 214 authorization and provides bundled telecommunications services to small and medium-sized businesses located in multi-tenant commercial office buildings in the following markets: Atlanta, Birmingham, Boston, Chicago, Dallas, Denver, Hartford, Houston, Indianapolis, Miami, Minneapolis, Nashville, New Orleans, New Jersey, New York, Orlando, Philadelphia, Phoenix, Pittsburgh, Portland, San

<sup>1</sup> 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

<sup>2</sup> Applicants have also filed a transfer of control application related to international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related pending applications.

<sup>3</sup> 47 CFR § 63.03(b)(1)(ii).

Francisco, Seattle, Southern California (Los Angeles and Orange County), Tampa, and Washington, D.C. Cypress offers integrated service bundles that include local, long distance, and international telecommunications services; high-speed Internet connectivity; e-mail services; fully-managed firewall services; web hosting; virtual private networks; feature-rich digital desktop stations; calling cards; audio and web conferencing; and digital business television. Cypress delivers these services over in-building networks that it owns and operates. However, Cypress does not own or operate any switches or transmission facilities outside of the multi-tenant buildings in which its customers are located. Rather, Cypress's regulated telecommunications services are provided entirely on a resale basis, using facilities and switches that are owned and operated by other telecommunications carriers. Cypress Operating is a wholly-owned subsidiary of Cypress Communications, Inc., which in turn is a wholly-owned subsidiary of Cypress Holding.<sup>4</sup> Cypress Holding is a publicly-traded corporation organized under the laws of Delaware with the same principal place of business as Cypress Operating. While several of the existing shareholders in Cypress Holding hold a 10 percent or greater equity interest in the company, no shareholder or group of shareholders controls Cypress.

THC is a Delaware corporation established to affect the purchase of Cypress Holding. THC is not a telecommunications carrier and holds no Section 214 authority. THC is an indirect subsidiary of First Islamic Investment Bank, E.C. ("FIIB"). FIIB is a joint stock company organized under the laws of the Kingdom of Bahrain. Founded in 1996, FIIB is headquartered in Bahrain with U.S. and U.K. subsidiary offices in Atlanta and London. In the U.S., FIIB operates through Crescent Capital Investments, Inc. ("Crescent"), a Delaware corporation headquartered in Atlanta, Georgia, which is an indirect, wholly-owned U.S. subsidiary of FIIB. Crescent is principally engaged in identifying and structuring investments for the benefit of its parent company, FIIB, and clients of FIIB. With respect to FIIB's proposed investment in Cypress, Crescent will provide management and strategic advice to FIIB post-close. Crescent's management is comprised primarily of U.S. citizens who are experienced in the banking and investment business.

While one shareholder holds approximately 10.5 percent of the ownership interest in FIIB, and the employees of FIIB and Crescent collectively hold approximately 11 percent of the ownership interest, no shareholder or group of shareholders holds a controlling interest in FIIB, and there are no voting or other agreements that would give control to one shareholder or group of shareholders. Moreover, under the proposed post-close ownership structure described below, no FIIB shareholder or group of shareholders will have a 10 percent or greater equity or voting interest in Cypress. Neither FIIB nor any of its affiliates currently provide telecommunications services or hold a 10 percent or greater direct or indirect equity interest in any entity providing telecommunications services in the U.S. or abroad.

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<sup>4</sup> Cypress Holding, together with Cypress Communications and Cypress Operating, are collectively referred to as "Cypress."

On November 5, 2004, TechInvest Acquisition, Inc. ("Merger Corporation"),<sup>5</sup> THC and Cypress Holding entered into an Agreement and Plan of Merger (the "Merger Agreement"). Pursuant to the Merger Agreement, Merger Corporation will merge with and into Cypress Holding, with Cypress Holding being the surviving corporation and becoming a direct, wholly-owned subsidiary of THC. Post-transaction, FIIB will control Cypress, and no person will hold interests that would be sufficient to constitute a 10 percent or greater equity or voting interest in Cypress post-close or confer the ability to control Cypress. The Merger Agreement provides that the existing shareholders of Cypress Holding are entitled to receive in cash an amount equal to \$39,350,000, subject to adjustment for changes in working capital prior to closing and after repayment of certain indebtedness of Cypress Holding, for all of the outstanding capital stock of Cypress Holding. The proposed transaction will result in a change in ownership of Cypress, but the management and operation of Cypress will continue largely unchanged. The new owners will be largely passive foreign investors who are clients of Crescent. The closing of the transaction is contingent upon receipt of necessary regulatory approvals and the approval of the shareholders of Cypress Holding.

All of the voting stock of THC will be held by 15 Cayman Island entities, each a company limited by shares (collectively, the "Voting Cayman Entities").<sup>6</sup> The ownership of the voting stock will be divided equally between these companies. Accordingly, each Voting Cayman Entity will individually hold approximately 6.67 percent of the voting interest in Cypress under the Commission's rules. In total, the voting stock of THC will represent 2 percent of the aggregate equity value of THC. As such, none of the Voting Cayman Entities will hold a 10 percent or greater equity or voting interest in Cypress post-close. The ownership interest in the Voting Cayman Entities will be held by approximately 50 international investors (the "International Investors"). Some of the International Investors are also shareholders in FIIB, but none are employees of FIIB or Crescent. Each International Investor has granted a revocable proxy to First Islamic Investment Management Limited ("FIIM"), a wholly-owned, indirect subsidiary of FIIB, to vote the investor's shares on all matters. In addition, each Voting Cayman Entity has entered into an administrative agreement with FIIM pursuant to which FIIM will be authorized to vote the voting stock of THC and make all major decisions on behalf of the Voting Cayman Entities. The boards of directors of the Voting Cayman Entities consist entirely of FIIB personnel. No International Investor or group of International Investors will be allowed to hold ownership interests in the Voting Cayman Entities that, separately or combined with any interest in FIIB, would be sufficient to constitute a 10 percent or greater voting interest in Cypress post-close or confer the ability to control Cypress. To the best of THC's knowledge and belief, there are no voting arrangements or other agreements to act in concert between or among the International Investors.

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<sup>5</sup> Merger Corporation is a Delaware corporation and wholly-owned subsidiary of THC that was incorporated for the sole purpose of entering into the Merger Agreement and consummating the transactions contemplated thereby.

<sup>6</sup> These companies are Amity Investment III Limited; Brace Investment III Limited; Coalition Investment III Limited; Enable Investment III Limited; Federation Investment III Limited; Group Investment III Limited; League Investment III Limited; Order Investment III Limited; Patron Investment III Limited; Society Investment III Limited; Tutor Investment III Limited Joint Investment III Limited; Matrix Investment III Limited; United Investment III Limited; and Yield Investment III Limited.

After closing, FIIB expects to finance the merger in part through funds raised in an offering of shares in offshore investment companies ("shares offering"). In connection with this shares offering, THC will issue 18.99 percent of its non-voting common stock to each of four Cayman Islands entities – TechAccess Capital Limited, TechShield Capital Limited, TechNet Capital Limited, and TechTV Capital Limited (collectively, the "Non-Voting Cayman Entities") – all of which are holding companies organized under Cayman Islands law and limited by shares. After closing, interests in these Cayman Islands entities will be sold through a shares offering to non-U.S. persons. Shareholders of FIIB, other than employees of FIIB and Crescent, will be eligible to purchase and hold these shares. However, no investor in the Non-Voting Cayman Entities will be allowed to hold an ownership interest in the Non-Voting Cayman Entities that, separately or combined with the investor's interest in FIIB, would be sufficient to constitute a 10 percent or greater equity interest in Cypress post-close.

THC common stock to be held by the Non-Voting Cayman Entities will not confer voting rights. Accordingly, the investors in the Non-Voting Cayman Entities who are not also shareholders in FIIB will be wholly passive investors. They will not have any right or ability to direct or influence the strategic decisions or the day-to-day operations of Cypress, to nominate Cypress' directors, or to direct the hiring or termination of Cypress's employees and management. Investors in the Non-Voting Cayman Entities who are also shareholders in FIIB will be largely passive investors. Any influence of these investors will be limited to their ownership interests in FIIB.

Financing for the proposed merger will also be provided in part through a shares offering to FIIP Limited ("FIIP"), a Cayman Islands company limited by shares. FIIP is the corporate vehicle for participation in THC by FIIB and Crescent employees. THC will issue 3.28 percent of its non-voting common stock to FIIP. No employee of FIIB or Crescent will be allowed to hold an ownership interest in FIIP that, separately or combined with the employee's interest in FIIB, would be sufficient to constitute a 10 percent or greater ownership interest in Cypress post-close or confer the ability to control Cypress.

After the financing arrangements with the Non-Voting Cayman Entities and FIIP are complete, FIIB will retain no more than 18.76% percent of the non-voting stock in THC through a wholly-owned indirect subsidiary, TechInvest Holdings Limited ("THL"), a Cayman Islands company limited by shares. THL is a wholly-owned subsidiary of First Islamic Investment Holdings Limited ("FIIH"), a holding company and Cayman Islands company limited by shares, which is in turn a wholly-owned subsidiary of FIIB.

The Applicants assert that the proposed transaction is in the public interest because it will allow the existing shareholders of Cypress to exit the telecommunications business in an orderly fashion, and will bring additional capital to Cypress, which will strengthen it and better ensure that it remains a viable long-term competitor in the telecommunications marketplace. Also, Applicants state that the proposed transfer of control will not result in a change of carrier for Cypress' customers. Immediately following consummation of the proposed transaction, Cypress will continue to provide high-quality communications services to its customers without interruption and without immediate change in rates, terms or conditions. In fact, the operations

of Cypress Communications will largely continue to be determined by many of the same management, technical, and customer service personnel that currently oversee those operations. Cypress further states that the proposed foreign ownership should not present an issue because, while the company owns and controls in-building networks, it does not own or operate any transmission or switching facilities that are part of the public switched telecommunications network or, indeed, any, facilities outside of the buildings in which its customers are located.

## **GENERAL INFORMATION**

The transfer of control of assets identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments on or before December 3, 2004**, and **reply comments on or before December 10, 2004**.<sup>7</sup> Unless otherwise notified by the Commission, Applicants are permitted to transfer control on the 31<sup>st</sup> day after the date of this notice.<sup>8</sup> Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands

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<sup>7</sup> See 47 C.F.R. § 63.03(a).

<sup>8</sup> Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

**In addition, one copy of each pleading must be sent to each of the following:**

- (1) the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12<sup>th</sup> Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: [www.bcpiweb.com](http://www.bcpiweb.com); phone: 202-488-5300 fax: 202-488-5563;
- (2) Tracey Wilson-Parker, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: [tracey.wilson-parker@fcc.gov](mailto:tracey.wilson-parker@fcc.gov);
- (3) Alex Johns, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 3-C403, Washington, D.C. 20554; e-mail: [alexis.johns@fcc.gov](mailto:alexis.johns@fcc.gov);
- (4) Terri Natoli, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C234, Washington, D.C. 20554; e-mail: [terri.natoli@fcc.gov](mailto:terri.natoli@fcc.gov);
- (5) Susan O'Connell, Policy Division, International Bureau, 445 12<sup>th</sup> Street, S.W., Room 7-B544, Washington, D.C. 20554; email: [susan.o'connell@fcc.gov](mailto:susan.o'connell@fcc.gov); and
- (6) James Bird, Office of General Counsel, 445 12<sup>th</sup> Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: [james.bird@fcc.gov](mailto:james.bird@fcc.gov).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone: 202-488-5300, fax: 202-488-5563, or via e-mail [www.bcpiweb.com](http://www.bcpiweb.com).

For further information, please contact Tracey Wilson-Parker at (202) 418-1394, or Alex Johns at (202) 418-1167.

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